

ROBERT C. SCHLEIN
California State Bar No. 97876
Attorney at Law
401 "B" Street, Suite 2209
San Diego, CA 92101
Telephone: (619) 235-9026
Email: robert@rcslaw.org

Attorney for Herberth Morales-Sosa

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
(HONORABLE IRMA E. GONZALEZ)

UNITED STATES OF AMERICA,)	Case: 08cr1808-IEG
)	
Plaintiff,)	Date: September 2, 2008
)	Time: 2 p.m.
v.)	
)	
HERBERTH MORALES-SOSA,)	MOTIONS TO:
)	
Defendant.)	(1) COMPEL FURTHER DISCOVERY;
)	(2) GRANT LEAVE TO FILE FURTHER
)	MOTIONS

TO: KAREN P. HEWITT, UNITED STATES ATTORNEY, and
DALE BLANKENSHIP, ASSISTANT UNITED STATES ATTORNEY

MOTIONS

Defendant, HERBERTH MORALES-SOSA, by and through his attorneys, Robert C. Schlein, asks this Court pursuant to the United States Constitution, the Federal Rules of Criminal Procedure, and all other applicable statutes, case law, and local rules for an order to:

- (1) Compel Further Discovery;
- (2) Grant Leave to File Further Motions.

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5 *Attorney for HERBERTH MORALES-SOSA*

6 UNITED STATES DISTRICT COURT
7 SOUTHERN DISTRICT OF CALIFORNIA
8 (HONORABLE IRMA E. GONZALEZ)

9 UNITED STATES OF AMERICA,)
10)
Plaintiff,)
11)
v.)
12)
HERBERTH MORALES-SOSA,)
13)
Defendant.)
14)
_____)

Case: 08cr1808-IEG

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STATEMENT OF FACTS AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT'S MOTIONS FOR FURTHER
DISCOVERY

I.

STATEMENT OF FACTS

17 The following statement of facts is based, in part, on materials received from the government.
18 The facts alleged in these motions are subject to amplification and/or modification at the time these motions
19 are heard. The government alleges the following:

20 "On or about March 20, 2008, within the Southern District of California, defendant, Herberth
21 MORALES-Sosa, an alien, who previously had been excluded, deported and removed from the United
22 States to Mexico, was found in the United States, without the Attorney General or his designated successor,
23 and the Secretary of the Department of Homeland Security (Title 6, United States Code, Sections 202(3)
24 and (4), and 557), having expressly consented to the defendant's reapplication for admission into the United
25 States; in violation of Title 8 United States Code, Section 1326."

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II.

MOTION TO COMPEL FURTHER DISCOVERY AND PRESERVE EVIDENCE

While some discovery has been provided in this case, Defendant moves for the production by the government of the following discovery and for the preservation of evidence. This request is not limited to those items that the prosecutor knows of, but rather includes all discovery listed below that is in the custody, control, care, or knowledge of any government agency. See generally Kyles v. Whitley, 514 U.S. 419 (1995); United States v. Bryan, 868 F.2d 1032 (9th Cir. 1989).

(1) The Defendant's Prior Record. Evidence of prior record is available under Fed. R. Crim. P. 16(a)(1)(D). **Defense counsel also requests production of court dockets, judgments, probation or police reports, or any other documents related to defendant's two drug-related convictions in Los Angeles Central Court, case numbers BA043024 and BA054704, from 1991 and 1992, respectively. Both convictions are for violating the California Health and Safety Code Section 11352(a) by transporting or selling a narcotic or controlled substance;**

(2) Brady Material. Defendant requests all documents, statements, agents' reports, and tangible evidence favorable to the defendant on the issue of guilt and/or which affects the credibility of the government's case. Under Brady, impeachment as well as exculpatory evidence falls within the definition of evidence favorable to the accused. United States v. Bagley, 473 U.S. 667 (1985); United States v. Agurs, 427 U.S. 97 (1976). Defense counsel specifically requests any and all files in the government's possession **(including all A files)** indicating any claim of United States citizenship by Mr. Morales-Sosa's parents and grandparents.

In addition, Mr. Morales-Sosa requests any information tending to show that a prospective government witness: (i) is biased or prejudiced against the defendant; (ii) has a motive to falsify or distort his testimony; (iii) is unable to perceive, remember, communicate or tell the truth; or (iv) has used narcotics or other controlled substances, or has been an alcoholic. **This would specifically include any and all reports involving any investigations and grand jury testimony pertaining to the investigating and arresting agents or confidential sources in this case;**

(3) Defendant's "A" File. The defendant requests his Immigration and Naturalization service "A" file;

1 (4) The Record of any Deportation Hearing. The defendant requests all records, tapes and
 2 transcripts, including but not limited to the tapes from all alleged deportations; and from any and all
 3 administrative hearings relating to any and all alleged orders of deportation pertaining to him. Most
 4 urgently needed are the recordings of the deportation from October 24, 1991;

5 (5) Transcript of Grand Jury Testimony. The defendant requests of the grand jury testimony
 6 and rough notes of all witnesses expected to testify at the motion hearing or at trial. This evidence is
 7 discoverable under Fed. R. Crim. P. 12(i) and 26.

8 III.

9 MOTION FOR LEAVE TO FILE FURTHER MOTIONS

10 At the time of preparation of these motions, HERBERTH MORALES-SOSA and defense
 11 counsel have received limited discovery from the government. As additional information comes to
 12 light the defense may find it necessary to file further motions. It is, therefore, requested that defense
 13 counsel be allowed the opportunity to file further motions based upon information gained through the
 14 discovery process.
 15

16 IV.

17 CONCLUSION

18 For the foregoing reasons, Defendant respectfully requests that the Court grant the above
 19 motions.
 20

Respectfully submitted,

21 Dated: August 13, 2008

/s/ROBERT C. SCHLEIN

Robert C. Schlein

Attorney-at-Law

Attorney for Defendant MORALES-SOSA

robert@rcslaw.org

1
2 **UNITED STATES DISTRICT COURT**
3 **SOUTHERN DISTRICT OF CALIFORNIA**
4

5 UNITED STATES OF AMERICA,)
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7 Plaintiff,)
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9 v)
10 HERBERTH MORALES-SOSA,)
11)
12 Defendant.)
13 _____)

Case No.: 08cr1808-IEG

CERTIFICATE OF SERVICE

12 IT IS HEREBY CERTIFIED THAT:

13 I, Robert C. Schlein, am a citizen of the United States and am at least eighteen years of age.
14 My business address is 401 "B" Street, Suite 2209, San Diego, California, 92101.

15 I am not a party to the above-entitled action. I have caused service of:

16 **Notice of Motions**

17 **Motion to: (1) Compel Further Discovery;**

18 **(2) Grant Leave to File Further Motions**

19 **Memorandum of Points and Authorities**

20 on the following parties by electronically filing the foregoing with the Clerk of the District Court
21 using its ECF System, which electronically notifies them.

22 1. Dale Blankenship, Assistant United States Attorney

23 I declare under penalty of perjury that the foregoing is true and correct.

24 Executed on August 13, 2008.

25
26 s/Robert C. Schlein
27 ROBERT C. SCHLEIN
28